

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

APR 1 9 15 AM '97

Federal Communications Commission

DA 97-590

DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Potts Camp and Saltillo, Mississippi)

)
)
)
) MM Docket No. 97-107
) RM-9023
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 19, 1997

Released: March 28, 1997

Comment Date: May 19, 1997

Reply Comment Date: June 3, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Olvie E. Sisk ("petitioner"), licensee of Station WCNA(FM), Channel 240C3, Potts Camp, Mississippi, proposing the reallocation of Channel 240C3 from Potts Camp to Saltillo and the modification of petitioner's license to specify Saltillo as Station WCNA(FM)'s community of license. Petitioner states it will apply for Channel 240C3 at Saltillo, if allotted.

2. Petitioner seeks modification of Station WCNA(FM)'s authorization pursuant to the provision of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expression of interest.¹ In support of its proposal petitioner states that Saltillo is a growing and thriving community while Potts Camp is a community in decline. The population of Saltillo has increased by 259 percent over the past 25 years while Potts Camp's population has declined by approximately 18 percent since 1970. Petitioner claims as a result of Saltillo's growth, the community has acquired a new high

¹ See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990).

school. Saltillo also has four medical doctors and approximately 100 businesses.² Those businesses include supermarkets, drug stores, building supply stores, recreational facilities, car dealers, service stations, 7-11 stores, and fast food restaurants. In contrast, petitioner describes Potts Camp as a collapsing community with a declining population. The decline of Potts Camp is reflected in the lack of businesses and services located in the community. Petitioner states that, according to the mayor of Potts Camp, the town has no doctors, dentists, and supermarkets. The town has no more than ten stores, all of which are old and run down. Petitioner claims that since the time WCNA(FM) went on the air in October 1995, it has sold no advertising whatsoever to anyone in Potts Camp. Further, petitioner argues that Saltillo is located in Lee County which has an estimated population of 71,200 persons, while the population of Marshall County, where Potts Camp is located, is only 31,800. Finally, petitioner claims that Potts Camp does not and can not support its own radio station, thus it can only be concluded that there is no interest in maintaining the allotment in Potts Camp.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. Our initial analysis confirms that while petitioner's proposal would provide a first local aural transmission service to Saltillo, it also would deprive Potts Camp of its sole local service, since Station WCNA(FM) is the only station licensed to serve the community. Although the Community of License MO&O restricts the removal of a community's sole local broadcast service, that document also states that a waiver of the prohibition will be considered "in the rare circumstances where removal of a local service might serve the public interest." *Id.*, 5 FCC Rcd 7096. However, we do not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first local transmission to another community. The reallocation proposal must service the Commission's allotment priorities and policies.³ In this case, petitioner maintains that adoption of its proposal would provide service to a larger community and would more likely enable Station WCNA(FM) to survive economically. In order to evaluate this proposal it is necessary to solicit additional information. Therefore, we request that petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 240C3 is reallocated to Saltillo. Petitioner should also indicate the number persons located in any white or gray areas that are created by the adoption of this proposal. The study should also indicate the number of reception services which are now available within the gain and loss areas.

² According to the 1990 U.S. Census, Potts Camp has a population of 483 persons and Saltillo has a population of 1,782 persons.

³ The FM priorities are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

4. Channel 240C3 can be allotted to Saltillo, Mississippi, in compliance with the minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) north to accommodate petitioner desired site.⁴ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional channel at Saltillo.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Potts Camp, Mississippi	240C3	—
Saltillo, Mississippi	—	240C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before May 19, 1997, and reply comments on or before June 3, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Frank R. Jazzo
Anne Goodwin Crump
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
Eleventh Floor
Rosslyn, Virginia 22209
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of

⁴ The coordinates for Channel 240C3 at Saltillo, Mississippi, are 34-33-39 NL and 88-40-59 WL.

Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.